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Office Supreme Court, U. S.
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JAMES D. MAHER,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 2, Original.—October Term, 1918.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

MOTION AND ORDER.

By John R. Saunders,
Attorney-General.

Wm. A. Anderson,
Randolph Harrison,
Associate Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 2, Original.—October Term, 1918.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

Motion to Retain Jurisdiction and Grant Complete Relief.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Commonwealth of Virginia, by John R. Saunders, her Attorney-General, respectfully represents that the State of West Virginia by Act of her Legislature approved April 1st, 1919, has made provision for the payment of the judgment rendered by this Court in favor of Virginia in the above cause on the 14th day of June, 1915. By the terms of said Act the State of West Virginia will pay in cash $1,062,867.16 with interest at five per centum per annum from January 1st, 1919, until paid, and will discharge the residue, to-wit, $13,500,000.00, in bonds of the State of West Virginia bearing date January 1st, 1919, with interest at three

and one-half per centum per annum, payable semi-annually on the first days of January and July of each year, the payment of the principal of said bonds to be distributed over a period of twenty years, in the manner provided in said Act.

The State of West Virginia, through its Treasurer, as directed by said Act, did, on the 18th day of April, 1919, pay to the Clerk of this Court one-half of the costs of this suit, in pursuance of the decree rendered in this cause on the 14th day of June, 1915; and the said State, through its said Treasurer, in pursuance of the provisions of the Act of its Legislature aforesaid, did, on the 18th day of April, 1919, make payment to the Commonwealth of Virginia acting by and through her Commission, constituted under and by virtue of the joint resolution and Act of the General Assembly of Virginia approved, respectively, March 6th, 1894, and March 6th, 1900, of the cash payment aforesaid, to-wit, the principal sum of $1,062,867.16 with interest thereon up to and including April 17th, 1919, amounting to $15,795.39, the total payment aggregating the sum of $1,078,662.55, which the said Virginia Debt Commission has deposited to its credit in the Riggs National Bank of Washington, D. C.; the said payment constituting a credit *pro tanto* on the judgment of this honorable Court above referred to.

The bonds provided for by said Act of the Legislature of West Virginia are in process of being engraved and will, in accordance with the terms of said Act, be delivered at an early date to the Commonwealth of Virginia acting by and through her said Commission.

The Commonwealth of Virginia by John R. Saunders, her Attorney-General, in pursuance of a resolution adopted by the Virginia Debt Commission, with the approval of said Attorney-General, on the 17th day

of April, 1919, and herewith exhibited, respectfully moves the Court to retain jurisdiction of this cause for the purpose of giving complete relief as prayed for in her Bill, and giving full effect to the decree of this Court pronounced in this cause on the 14th day of June, 1915, by receiving into its custody the money and bonds paid and to be delivered, as aforesaid, in settlement of said judgment, and determining all questions and making distribution of said money and bonds among the parties entitled, according to their legal and equitable rights. Among the questions to be determined are, the complainant's right to participate in the fund in her own right, and if so to what extent; the expenses properly chargeable against the fund, including reasonable compensation to the members of the Virginia Debt Commission and the fees of Virginia's counsel in this cause, and the ascertainment of those who are entitled to share in the distribution of the cash and bonds aforesaid, and the amount to which each is so entitled, after the payment of all expenses and costs of the litigation and of the proceedings connected therewith, including the fair and just compensation of the members of the said Commission and the fees of counsel retained on behalf of Virginia.

In order, therefore, that justice shall be done and complete relief afforded and the decree of the Court effectuated, the Commonwealth of Virginia by John R. Saunders, her Attorney-General, moves the Court:

(1) To appoint receivers to take over and receive from the Commonwealth of Virginia acting by and through her Commission, the money and bonds aforesaid, to hold the same until the further orders of this Court, and then to pay out and distribute the same according to the further order or orders of this Court; and

(2) To appoint a Special Master to take and state all proper accounts in the premises, so that the proceeds received under said Act of the Legislature of West Virginia may be finally distributed and disposed of in due conformity to the orders of this Court, and with due regard to the interests of all parties.

Herewith is submitted a draft of the form of order desired.

COMMONWEALTH OF VIRGINIA,
By JOHN R. SAUNDERS,
Attorney-General.

WM. A. ANDERSON,
RANDOLPH HARRISON,
Associate Counsel.

I concur in the above motion.

SANFORD ROBINSON,
Counsel for bondholding creditors and certificate holders.

Resolution Adopted by the Virginia Debt Commission and Approved by the Attorney General of Virginia, April 17, 1919.

RESOLVED, That the Commission, acting by and with the approval of the Attorney General, shall, in conference with the Depositing Committee of the Securities known as the Virginia Deferred Certificates (commonly known as the New York Committee on the West Virginia Debt Settlement), of which Mr. Eugene Delano is Chairman, or representatives thereof, cause to be prepared and presented to the Supreme Court of the United States a petition, or motion and draft of a decree thereon, to be followed by other appropriate proceedings, to the end that said Supreme Court may retain jurisdiction of the suit of Virginia v. West Virginia until the rights of all the parties interested in the distribution of the proceeds provided for in the Act of the Legislature of West Virginia, entitled "An Act providing for the payment of West Virginia's part of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, as ascertained by the judgment of the Supreme Court of the United States and adjusted by the two States, and to provide for the issuance of bonds and the raising and appropriation of money for the payment of said judgment," approved by the Governor of West Virginia on the 1st day of April, 1919, are determined, and to that end that said Supreme Court may cause all proper orders to be entered in said suit providing for the appointment of a Master Commissioner, with directions to take and state all proper accounts, and especially what interest

the State of Virginia has in said proceeds, and all other proper accounts, including the ascertainment of the just compensation of the members of this Commission and its Secretary and of the counsel retained on behalf of Virginia, and any other costs or charges properly chargeable against said proceeds, so that the amount realized under the decree may be finally disposed of in due conformity to the orders of the Court and with due regard to the interests of all concerned.

RESOLVED, FURTHER, That this Commission will co-operate, with the approval of the Attorney-General, with said New York Committee, with a view to having the Supreme Court of the United States appoint receivers to receive and distribute, under the orders of the Court, the money and bonds to be paid and delivered by West Virginia under the terms of said Act.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 2, Original.—October Term, 1918.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

Order Entered April....., 1919, Appointing Receivers and Referring the Cause to a Master.

THIS CAUSE came on this day to be again heard upon the papers formerly read and the proceedings and orders formerly entered herein, and upon the motion of the Commonwealth of Virginia by John R. Saunders, her Attorney-General, concurred in by the counsel for the bondholding creditors and certificate holders to retain jurisdiction of this cause and grant complete relief; and it appearing to the Court that the State of West Virginia has made provision for the settlement of the judgment rendered in this cause on the 14th day of June, 1915, by Act of the Legislature of said State approved on the 1st day of April, 1919, and that in pursuance of said Act the State of West Virginia has paid to the Clerk of this Court one-half of

the costs of this suit, as required by the decree entered herein on June 14th, 1915, and has paid to the Commonwealth of Virginia acting by and through her Debt Commission, the principal sum of $1,062,867.16, together with interest thereon at the rate of five per centum per annum from the 1st day of January, 1919, up to and including the 17th day of April, 1919, amounting to $15,795.35, the total payment aggregating the sum of $1,078,662.55, which cash payment, as aforesaid, the said Virginia Debt Commission has deposited in the Riggs National Bank of Washington, D. C.; and it further appearing that the bonds contemplated by said Act of the Legislature of West Virginia, amounting to $13,500,000.00, the balance due upon said judgment as of January 1st, 1919, are in process of being engraved and will shortly be delivered to the Commonwealth of Virginia, acting by and through her said Commission; and it further appearing that the Commonwealth of Virginia, acting by and through her said Commission, desires to place in the custody of, and under the control of this Court the money and securities aforesaid, collected and to be collected by the Commonwealth of Virginia, acting by and through her said Commission, to be disbursed and distributed under the orders of this Court;

ON CONSIDERATION OF THE PREMISES it is ordered that Honorable Thomas S. Martin of Virginia, and Thatcher M. Brown, Esquire, of New York, be, and they are hereby designated as receivers, to take over and receive the cash and bonds referred to, from the Commonwealth of Virginia, acting by and through her said Commission, and hold the same subject to the orders of this Court; and that the Riggs National Bank of Washington, D. C., is hereby designated as

the depository of said receivers for the cash payment made by the State of West Virginia, as aforesaid, and The Central Union Trust Company of New York is hereby designated as the depository of said receivers for the bonds referred to.

The said receivers are authorized and empowered to detach and collect the coupons falling due upon said bonds as they, from time to time mature, depositing the money so collected in said The Central Union Trust Company of New York, subject to the orders of the Court in this cause.

Before acting as receivers hereunder the said Thomas S. Martin and Thatcher M. Brown shall give bond before the Clerk of this Court, with surety to be approved by the Clerk, in the amount of $----------, conditioned upon the faithful discharge of the duties of their office as such receivers; and

IT IS FURTHER ORDERED that this cause be referred to William A. Glasgow, as Special Master, to ascertain and report to the Court:

1. The expenses incurred by the Virginia Debt Commission under the joint resolution, and Act of the General Assembly of Virginia approved, respectively, March 6th, 1894, and March 6th, 1900, including reasonable compensation of the members of said Commission, as provided in said resolution and Act, and the just compensation of the counsel retained on behalf of Virginia;

2. The commission to be paid to the committee representing the certificates deposited under the deposit agreement, bearing date July 28th, 1898;

3. Whether the Commonwealth of Virginia is entitled in her own right, to any portion of the proceeds of the judgment against West Virginia, and if so, the amount thereof;

4. Those entitled to share in the distribution of the cash and bonds, and the amount to which each is so entitled, after the payment of all costs, expenses and charges properly chargeable against the proceeds of said judgment against West Virginia:

5. All other facts and circumstances which, in the opinion of the Master, are necessary to make a complete distribution of the fund and the final determination of all questions involved in this cause.

Said Master is authorized and empowered, subject to the approval of the Chief Justice, to employ such accountants, stenographers and other clerical assistants as he may find it desirable to employ, in order to the prompt and efficient execution of this order of reference, and to agree with such accountants, stenographers and other clerical assistants as to the compensation to be made to them, as the Master may deem reasonable and just.

The Master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance and to state such alternative accounts as may be desired, subject to the direction of the Court.

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Supreme Court of the United States

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Office Supreme Court U. S.
FILED
OCT 9 1906
JAMES H. McKENNEY,
Clerk

No. 3 Orig.

O. T. 1907

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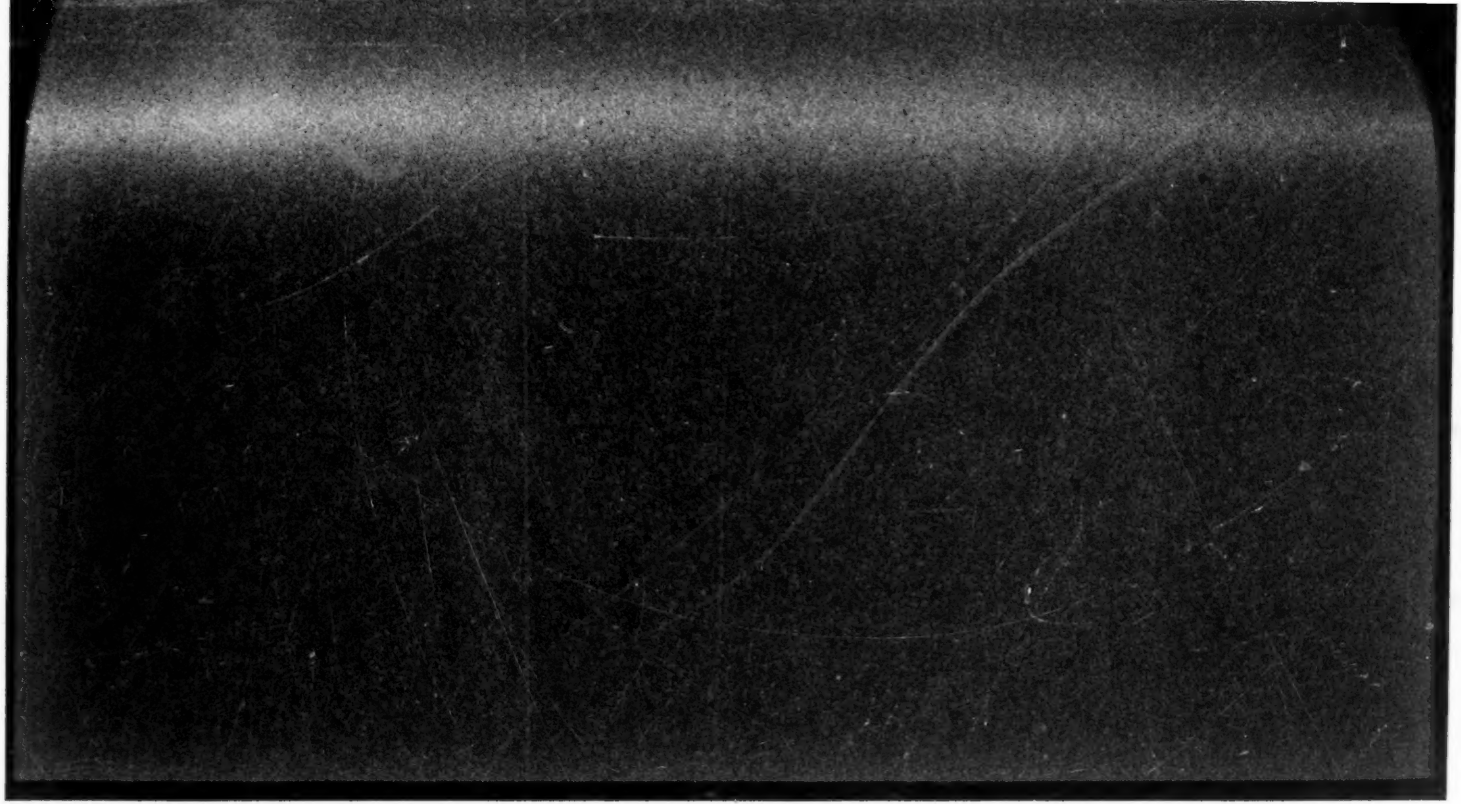
ORIGINAL

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

PETITION AND DEMURRER.



In the Supreme Court of the United States

OCTOBER TERM, 1906.

ORIGINAL NO. ———.

Commonwealth of Virginia

vs.)

State of West Virginia.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, one of the United State of America, by William M. O. Dawson, Governor, and Clark W. May, Attorney General, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly submitted that, by an examination of the bill of complaint in this cause, it will be observed that there is nothing in said bill contained showing a controversy between said Commonwealth of Virginia and said State of West Virginia justiciable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer, and that a day may be fixed by your Honors for the hearing of the same.

And as in duty bound your petitioner will ever pray.

_____

Governor of West Virginia.

_____

Attorney General of West Virginia.

_____

_____

_____*Counsel.*

In the Supreme Court of the United States

OCTOBER TERM, 1906.

ORIGINAL NO. ——.

COMMONWEALTH OF VIRGINIA

vs.)

STATE OF WEST VIRGINIA.

The demurrer of the State of West Virginia, defendant above named, by William M. O. Dawson, Governor, and Clark W. May, Attorney General of said State of West Virginia, to the bill of complaint of the Commonwealth of Virginia, complainant, by William A. Anderson, Attorney General of said Commonwealth of Virginia.

The defendant, the State of West Virginia, above named, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, or in any way or manner, demurs thereto, and for the cause of demurrer shows:

First: The jurisdiction of this Court does not extend to the character of demands, alleged in the bill in this cause, being in substance simple demands for money, and this Court could not enforce a judgment for money against one of the sovereign states of the Union of the United States in any way or manner.

Second: The bill on its face shows that the said Commonwealth of Virginia has no suable interest in the demands for money set out therein which would entitle her to the relief prayed for therein, and that the said demands if recovered would be only for the benefit of certain individuals, who are the holders of the alleged evidences of debt mentioned in said bill.

Third: The bill on its face shows that so far as said Commonwealth of Virginia may have any ownership of any of such alleged evidences of debt, the acts of the Legislature of said Commonwealth, claimed by the said Attorney General thereof as authority to institute this cause, do not in fact authorize any suit therefor to be instituted, but only authorizes, if any authority at all is given, action on the part

of the Commission in said bill mentioned and said Attorney General for the benefit and at the expense of the individuals in the bill and exhibits called "Certificate holders," which is in effect giving the use of the name of said Commonwealth to such "Certificate holders" for the purpose of attempting to collect their alleged private money demands against said State of West Virginia.

Fourth: The said bill does not sufficiently and definitely set out therein the alleged demands for money claimed therein, so that a complete and proper answer can be made thereto.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

Governor of West Virginia.

Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss.

This day there personally appeared before me, the undersigned Clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clark W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing demurrer, and being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as Clerk of said Court and the official seal thereof ——— day of October, 1906.

Clerk of the Supreme Court of Appeals
of the State of West Virginia.

I, Clark W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Attorney General of West Virginia

Office Supreme Court, U. S.
FILED.
FEB 25 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

[redacted] No. 2 Orig

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COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE AND AMENDED DEMURRER.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 25272

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE.

TO THE COMMONWEALTH OF VIRGINIA AND WILLIAM A. ANDERSON, *Attorney General:*

You are hereby, notified that the defendant, The State of West Virginia, will, on Monday, February 25, 1907, or as soon thereafter as the motion can be made, ask leave of the court to file an amended demurrer in the above-entitled cause. A copy of said proposed amended demurrer is hereto attached.

FEBRUARY 16, 1907.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, The State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn amended demurrer herewith presented to the bill of complaint in the above-entitled cause, and asks that a day may be fixed by your Honors for the hearing of the same.

And, as in duty bound, your petitioner will ever pray.

____ ____,
Governor of West Virginia.

____ ____,
Attorney General of West Virginia.

____ ____,
____ ____,
____ ____,
Counsel.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1906.

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA
vs.
STATE OF WEST VIRGINIA.

AMENDED DEMURRER.

The defendant, The State of West Virginia, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, of said State, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in manner and form as the same are set forth and alleged, or in any way or manner, presents this amended demurrer thereto, and for cause of demurrer shows:

First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not

constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinitely and uncertain that no proper answer can be made thereto.

Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be henec dismissed with her costs and charges in the matter most wrongfully sustained.

____ ____,
Governor of West Virginia.

____ ____,
Attorney General of West Virginia.

STATE OF WEST VIRGINIA,
County of Kanawha, ss:

This day there personally appeared before me, the undersigned, clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clark W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above-entitled cause, and whose names as such are signed to the foregoing amended demurrer, and, being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing amended demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as clerk of said court and the official seal thereof — day of October, 1906.

____ ____,
Clerk of the Supreme Court of Appeals of the State of West Virginia.

I, Clarke W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing amended demurrer is well founded in point of law.

____ ____,
Attorney General of West Virginia.